

Honorable Kate Brown  
Governor of Oregon

Honorable Ellen Rosenblum  
Attorney General of Oregon

Honorable Peter Courtney  
President, Oregon Senate

Honorable Tina Kotek  
Speaker, Oregon House of Representatives

Members of Oregon House of Representatives

Members of Oregon Senate

August 12, 2020

Re: Lawlessness in Portland

Dear Governor Brown, General Rosenblum, President Courtney, Speaker Kotek, Representatives, and Senators:

I am writing to you in regard to a matter of serious concern to all Oregonians. This relates to another virus which is infecting the state: the virus of lawlessness in the streets under the guise of “peaceful protests.”

Please understand, at the outset, that I fully support truly peaceful protests as to any issue. What I am writing about is protestors who are breaking Oregon laws – and who now will not be held accountable under the new pronouncements by Multnomah County District Attorney Mike Schmidt.

I will let Mr. Schmidt’s pronouncements speak for themselves. But the bottom line is that he has presented an invitation to protestors to break Oregon laws, by making it clear that he will not prosecute many kinds of criminal misconduct. This is an open invitation for people to break as many laws as possible within Multnomah County to test the willingness of the government to enforce the laws. Mr. Schmidt’s policy also tells Portland police officers - and any other public safety officers on duty in Multnomah County, for that matter – that he does not support them in their efforts to enforce the laws.

Under Article II, Section 18 of the Oregon Constitution, Mr. Schmidt can be subject to a recall petition. However, under Subsection 6 of this provision, the petition cannot be circulated against Mr. Schmidt until Mr. Schmidt has actually held the office of District Attorney for six months.

Since Mr. Schmidt took office on August 1, 2020 citizens will have to wait nearly six months to do what they can to take action to replace this District Attorney.

There is an interim solution available. Under ORS 180.070 the Attorney General may, when directed to do so by the Governor, take full charge of any investigation or prosecution of violations of law. This authorization does not eliminate the jurisdiction of the District Attorney, but it does allow the Attorney General to step in to prosecute crimes. The Governor may go a step further, under ORS 180.080, and authorize the Attorney General to actually displace the Multnomah County District Attorney as to particular prosecutions of crimes.

I recommend that the Governor empower Oregon's Attorney General to step in and manage the prosecution of all crimes committed within Multnomah County in the context of street protests which exceed the protections provided by the Free Speech provisions of the United States Constitution and the Free Expression provisions of the Oregon Constitution.

As an additional step, I encourage the leadership of the Legislative Assembly to consider the passage of legislation, during the next Special Session, which establishes a Special Prosecutor to handle all of the cases described above for a specific time period – perhaps one year.

We cannot stand by and allow one District Attorney to refuse to enforce the law in such a fashion that he encourages lawlessness and disrespect for the very laws passed by the Oregon Legislature and signed by the Governor. The steps described above would at least establish that the rule of law will continue to be applied in Oregon.

Over history, the United States has had some occasions where rogue prosecutors have engaged in inappropriate prosecution of individuals. Here, we have the opposite: a rogue prosecutor who is unwilling to proceed with charges against people who have clearly violated the law and who have disrupted public safety in the community of Multnomah County.

Sincerely,  
Kevin L. Mannix  
President  
Common Sense for Oregon